

DOCKET NO. 2000-493-C - ORDER NO. 2001-022

IN RE: Application of Network Telephone ) ORDER GRANTING ✓  
Corporation and LightNetworks, Inc. for ) MOTION FOR  
Approval of an Asset Purchase Agreement. ) EXPEDITED REVIEW  
) AND APPROVING  
) ASSET PURCHASE  
) AGREEMENT

NTC is a privately held Florida corporation with its principal offices located in Pensacola, Florida. NTC is a wholly owned subsidiary of NT Corporation, a Delaware corporation, which does not possess any federal or state authorizations to provide telecommunications services. NTC is a competitive provider of local and interexchange services. NTC is authorized to provide both local and interexchange services in all of the BellSouth states and interexchange services only in Texas and Arkansas. NTC is authorized by the FCC to provide domestic interstate interexchange and international

services as a non-dominant carrier in all fifty states and the District of Columbia. NTC is a certificated interexchange carrier and local service provider in South Carolina, having obtained certification in Docket No. 98-590-C, Order No. 1999-225, dated March 29, 1999.

LNI is a privately held Delaware corporation with its principal offices located in Atlanta, Georgia. LNI is authorized to provide both local and interexchange services in five states and is authorized to provide interexchange services only in two states. LNI is also authorized by the FCC to offer domestic interstate and international services in all fifty states and the District of Columbia as a non-dominant carrier. LNI is a certificated interexchange carrier in South Carolina having received its certification in Docket No. 2000-0136-C, Order No. 2000-543, dated June 28, 2000.

Applicants propose a transaction which will accomplish the following:

- a. LNI shall sell, transfer and assign to NTC all of LNI's right, title and interest in and to LNI's assets, as defined in the Asset Purchase Agreement;
- b. In consideration for the above transfer and sale of assets, NTC will pay to LNI the purchase price set forth in the Agreement.

By letter dated November 2, 2000, the Commission's Executive Director instructed the Applicants to publish a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing was to provide notice of the Application to any interested parties and to advise interested parties of the manner and time in which to file pleadings to participate in the docket. The Applicants filed Affidavits of Publication as proof that they had complied with the

instructions of the Executive Director. No Petitions to Intervene, letters of protest, or comments were received by the Commission with regard to the instant Application.

### **MOTION FOR EXPEDITED REVIEW**

As part of its Application, the Applicants requested expedited review and disposition of the Application in order that the Applicants could consolidate their respective operations as soon as possible. In furtherance of their request for expedited review, the Applicants filed verified testimony about the transaction with the Application. Once the return date expired with no intervention or opposition, the Commission Staff brought the matter to the Commission for consideration.

Upon consideration of the Applicants' request for expedited review, the Commission finds that expedited review should be granted. By their request, the Applicants waive their right to a formal hearing. The Commission finds that notice of the Application was properly afforded to the public and that no interested person sought to become a party to the proceeding. The Commission finds that procedural due process was afforded in this matter and further finds that the Applicants make a knowing waiver of a formal hearing. Therefore, the Commission will consider the Application in the context of its regularly scheduled weekly meeting, with court reporter present, and for purposes of the expedited review, the Commission will deem the examination of the Application and verified testimony during the course of the Commission's regularly scheduled meeting with court reporter present as a hearing on this matter.

### **EXAMINATION OF THE APPLICATION AND VERIFIED TESTIMONY**

By the Application, NTC proposes to acquire substantially all of the telecommunications assets of LNI, including but not limited to, the customer records and customer lists. The customers of LNI would be afforded the opportunity to switch their service from LNI to a substantially similar product offering of NTC or choose a different carrier. Those customers who switch to NTC would begin to receive local and long distance service provided by NTC under NTC's certificate to operate in South Carolina. In support of the Application, Applicants filed the verified testimony of Johnny Matthews, Chief Financial Officer of NTC.

According to the Application and the verified testimony of Mr. Matthews, NTC is a privately held Florida corporation with its principal offices located in Pensacola, Florida. NTC is a wholly owned subsidiary of NT Corporation, a Delaware corporation, which does not possess any federal or state authorizations to provide telecommunications services. NTC is a competitive provider of local and interexchange services. NTC is authorized to provide both local and interexchange services in all of the BellSouth states and interexchange services only in Texas and Arkansas. NTC is authorized by the FCC to provide domestic interstate interexchange and international services as a non-dominant carrier in all fifty states and the District of Columbia. NTC is a certificated interexchange carrier and local service provider in South Carolina, having obtained certification in Docket No. 98-590-C, Order No. 1999-225, dated March 29, 1999.

LNI is a privately held Delaware corporation with its principal offices located in Atlanta, Georgia. LNI is authorized to provide both local and interexchange services in

five states and is authorized to provide interexchange services only in two states. LNI is also authorized by the FCC to offer domestic interstate and international services in all fifty states and the District of Columbia as a non-dominant carrier. LNI is a certificated interexchange carrier in South Carolina having received its certification in Docket No. 2000-0136-C, Order No. 2000-543, dated June 28, 2000.

Under the Asset Purchase Agreement, NTC proposes to acquire substantially all of the telecommunications assets of LNI, including but not limited to, the customer records and customer lists. The customers of LNI would be given the opportunity to switch their service from LNI to a substantially similar product offering of NTC, or choose a different carrier. Those customers who choose to switch to NTC would begin to receive local and long distance service provided by NTC under NTC's previously approved operating authority. The testimony of Mr. Matthews indicates that NTC will offer the customers of LNI the opportunity to switch their service from LNI to a substantially similar product offering of NTC or to choose a different carrier. Thus after the transfer, the South Carolina customers of LNI will continue to receive their present level of service uninterrupted or have the option of switching their service to another carrier.

The Applicants offer that the proposed transaction will serve the public interest by enhancing the operating efficiencies of NTC. NTC can service its customers in a more efficient manner. NTC may also benefit from the economies of scale and receive discounts on quantity ordering of materials and services, which may allow services to be

provided at even more competitive rates in this state for present and future NTC customers.

Upon review and consideration of the Application, the verified testimony of Mr. Matthews, and the applicable law, the Commission hereby issues its findings of fact and conclusions of law:

### **FINDINGS OF FACT**

1. NTC is a privately held Florida corporation with its principal offices located in Pensacola, Florida. NTC is a wholly owned subsidiary of NT Corporation, a Delaware corporation, which does not possess any federal or state authorizations to provide telecommunications services. NTC is a competitive provider of local and interexchange services. NTC is authorized to provide both local and interexchange services in all of the BellSouth states and interexchange services only in Texas and Arkansas. NTC is authorized by the FCC to provide domestic interstate interexchange and international services as a non-dominant carrier in all fifty states and the District of Columbia. NTC is a certificated interexchange carrier and local service provider in South Carolina, having obtained certification in Docket No. 98-590-C, Order No. 1999-225, dated March 29, 1999.

2. LNI is a privately held Delaware corporation with its principal offices located in Atlanta, Georgia. LNI is authorized to provide both local and interexchange services in five states and is authorized to provide interexchange services only in two states. LNI is also authorized by the FCC to offer domestic interstate and international services in all fifty states and the District of Columbia as a non-dominant carrier. LNI is a

certificated interexchange carrier in South Carolina having received its certification in Docket No. 2000-0136-C, Order No. 2000-543, dated June 28, 2000.

3. NTC and LNI have entered into an Asset Purchase Agreement whereby LNI has agreed to sell and NTC has agreed to buy certain assets of LNI, including customer records and customer lists. NTC will service these customers pursuant to its authority granted by the Commission in Docket No. 98-590-C, Order No. 1999-225, dated March 29, 1999.

4. Customers of LNI will be afforded notice of the Asset Purchase Agreement, and the customers will be given the opportunity to switch their service from LNI to a substantially similar product offering of NTC or to choose a different carrier.

5. The transaction should produce economic efficiencies in operations and marketing and other benefits of size and scale which will hopefully produce tangible benefits for the customers of NTC.

#### **CONCLUSIONS OF LAW**

1. NTC is experienced in providing telecommunications services and desires to expand its operations in South Carolina and elsewhere.

2. Based on the above Findings of Fact, the Commission hereby determines that the Application filed by NTC and LNI requesting Commission approval of a proposed Asset Purchase Agreement will not adversely affect the public interest, and therefore, the Commission approves the requested Asset Purchase Agreement as described in the Application.


IT IS THEREFORE ORDERED THAT:

1. The Application of NTC and LNI for approval of an Asset Purchase Agreement is hereby approved as stated herein.
2. The Applicants shall notify all affected customers of the transaction. The Applicants shall provide proof, including a sample of the notification, to the Commission after notification has been completed.
3. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)